

***Delaware Health Resources Board
Meeting Minutes
Thursday, December 17, 2015 2:30 PM
DelDOT Administration Building
Farmington/Felton Conference Rooms
800 Bay Road
Dover, Delaware 19901***

Board Members Present:

Bill Love, Chair; Leighann Hinkle; Dave Hollen; Vincent Lobo, MD; Scott Perkins; Jill Rogers; Yrene Waldron; John Walsh; and Gina Ward.

Board Members Absent: Lynn Fahey; and Mark Thompson.

Staff Present: Helen Arthur; Marlyn Marvel; Joanna Suder; and Latoya Wright.

Call to Order and Welcome:

Chair, Bill Love, welcomed the Board members and called the meeting to order at 2:30 p.m.

October 22, 2015 and November 19, 2015 Meeting Minutes:

Yrene Waldron made a motion to approve the October 22, 2015 meeting minutes. John Walsh seconded the motion. There was a voice vote, from which Scott Perkins abstained. Motion carried.

Gina Ward stated that Paul Kempinski, MS, FACHE, of Nemours Alfred I. DuPont Hospital for Children, needs to be included on the guest attendance list for the November 19, 2015 meeting.

Ms. Ward made a motion to approve the November 19, 2015 meeting minutes with the addition of Mr. Kempinski on the guest attendance list. Dr. Vincent Lobo seconded the motion. There was a voice vote, from which Leighann Hinkle, Scott Perkins, Jill Rogers and Yrene Waldron abstained. Motion carried.

Updates

Health Resources Management Plan Update

Allison Shevock, PhD gave a presentation on Revising Delaware's Health Resources Management Plan (HRMP). A copy of the presentation is posted on the Health Resources Board website at <http://dhss.delaware.gov/dhss/dhcc/hrb/meetingpresentation.html>.

A draft revision of the HRMP was distributed to the Board members for review. The Board members will provide feedback on the revisions through February 2016 and a public hearing will be scheduled in March 2016. There will be a series of tiered approvals from April through May 2016 by the Health Resources Board, the Health Care Commission, and the Secretary of the Department of Health and Social Services. Legislative approval may also be required depending on specifics of the changes to the HRMP. Legislative approval will be sought during June and July 2016. Any applications coming in to the Board after July 2016 will be aligning with the revised HRMP.

Discussion

Gina Ward asked if the bodies evaluating the Certificate of Need (CON) in other states are volunteer Boards, such as the Health Resources Board, or something different.

Dr. Shevock stated that she has mostly reviewed states that are using a volunteer system or an appointment system. She has yet to come across a state where it would be a non-volunteer situation or a full time position. She has seen states mention hiring full time employees to help coordinate Board activities but, not to serve as Board members as their sole responsibility.

Many states meet on a modified schedule, which may not be monthly. Perhaps they are reviewing fewer categories of proposals because they are limiting their reviews to one or two types of facilities.

Ms. Ward asked if there is a way to evaluate how states that do not have a CON process compare in terms of health care costs, patient satisfaction, and accessibility. She asked if there is a way to measure whether market forces are doing the job sufficiently.

Dr. Shevock stated that some of the states that do not have a CON process abandoned their program long ago. For some of the states it was a more recent abandonment. Prior to abandoning their program they conducted cost effectiveness studies and other state level investigations. There have been a couple of federal national level investigations where they looked at how CON states compare with non CON states. It gets a little complicated because one state might just review one category, while another state might review 10 categories.

The available literature is not consistent. Some investigations concluded that the CON did not have much merit, while some concluded that it has done really well in improving patient outcomes, quality and different important characteristics.

Yrene Waldron asked why the National Health Planning Resources Development Act (NHPDA) was repealed.

Dr. Shevock stated that it was found at that time not to be cost effective with the way people were running it. States were receiving Federal funds but there was not a uniform following of rules and regulations across the board. An article was released by the National State Legislature that Dr. Shevock can provide the Board with. It stated that some states simply accepted the funds without taking much action. Whereas some states accepted the money and really did their due diligence in putting the work together and reviewing the applications. Only 12 states have abandoned the CON so the majority of the states still retained some sort of CON program.

Ms. Waldron asked if there is information available on what categories states with a CON program review. Dr. Shevock stated that the information is available and she can provide the Board with it.

Mr. Love asked why states would review telemedicine.

Dr. Shevock stated that, in the draft HRMP, telemedicine is one of the later categories that has yet to be developed. The thinking around that is still open to discussion in terms of specifically what will be reviewed.

Ms. Waldron stated that Home and Community Based Services is a broad category. She asked what is going to be included in that category; i.e., group homes, assisted living, etc.

Dr. Shevock stated that is open for input from the Board members. Historically there has been no inclusion of assisted living. Group homes and behavioral health care might be touched on. Currently the draft HRMP includes acute care and revised nursing home methodology; however, feedback and input is needed from the Board on what it would like to have included.

Ms. Rogers asked if these are potentially categories that the Board might consider and take into account but each may not necessarily be reviewed in a formal way. She asked if the state of home and community based services might inform some of the reviews the Board does with another category, or if Dr. Shevock is suggesting that there be a formal review process for each category.

Dr. Shevock stated that the draft HRMP is getting the infrastructure together. Talking about what will go into the decision making process in terms of how the Board would like to proceed with the reviews will be decided by the Board. If the Board agrees that a modified review or a step down review might be more appropriate for some categories, that is something that could be addressed in the draft. This is one of three to five iterations of the draft that Dr. Shevock hopes the Board will review and provide feedback. If anyone has concerns about the review process or what is included, it is open for discussion.

John Walsh asked what the rationale is for dropping obstetrics.

Dr. Shevock stated that they are reviewing other plans to see what is included and have not seen obstetrics included in other CON states. In addition, no applications have recently been submitted for obstetrics. It is a category that has not been getting much attention in relation to other categories, such as acute bed increases.

Ms. Waldron stated that the goal is to shift the burden of establishing need further in the direction of the applicant. She asked how the Board is going to vet that the data presented to them is factual and accurate information that is pertinent to what is happening today, as opposed to a study that was done three years ago.

Dr. Shevock stated that there are some demographic criteria that the applicant will need to use; i.e., they are all going to be using the same population projection data. They are all going to be using census bureau data, where Delaware population consortium data might not be available at that level. They are going to have to provide information such as revenue, patient quality measures and documentation that different plans are in place for improving patient outcomes.

There are also sections with language included in each part of the application where the applicant will need to provide a full description of the methods they used and provide the information that went into the calculations. Not only will the Board have the relevant numbers from the applicants, they are going to have information on how the applicant arrived at the numbers.

Mr. Love asked when the best version of the revised plan will be ready.

Dr. Shevock stated that the first draft was distributed today. As feedback is provided there will be another draft in January. The original plan was to time the draft updates with the Board meetings.

Mr. Love stated that there a few elements that are left out of the draft. The Board should provide feedback on the current draft prior to the January Board meeting.

Dr. Shevock stated that the Board members can also bring their feedback to the January meeting. There are four segments that have yet to be worked out.

Mr. Love stated that the revisions to the HRMP will require more discussion than a regular Board meeting. He suggested that the Board schedule a half day retreat devoted to discussing the draft HRMP and provide feedback prior to holding a public hearing. The Board members agreed.

Mr. Love suggested having a half day retreat in February or March. Dr. Shevock stated that sounds reasonable.

Mr. Love asked if the Legislature must formally approve the plan. Joanna Suder stated that was included in the revision timeline if the Board needs to revise the statute as well as the plan.

Ms. Waldron stated that Skilled Nursing Facilities are mandated by the current HRMP to submit data on a monthly basis to the Board for analysis so the Board has an idea of their occupancy rates. She asked if that is going to continue with the new plan. If so, and if any of them are noncompliant, she asked if there is anything in the plan that gives the Board the authority to penalize them. She stated that, if the Board is going to ask applicants to fulfill certain obligations, it is important that the plan include consequences for noncompliance.

Ms. Suder stated that under the statute the Board can revoke a CPR if conditions are not met.

Mr. Love stated that there might be some less drastic penalties that the Board might want to consider.

Ms. Ward stated that perhaps a process needs to be put in place by the Board that once every twelve months there is an agenda item to review the charity care statistics that have been submitted and who is noncompliant. It should be on the agenda to make sure the facilities are fulfilling the requirements.

Mr. Love stated that the next step is to submit comments to Dr. Shevock on the current draft. It will be discussed again at the January meeting. A three or four hour retreat will be scheduled in February or March to go over the draft and finalize it to present in March or April at a public hearing.

Upcoming Items Before the Board

There were no upcoming items before the board at this time.

Executive Session

Dave Hollen made a motion that the Board enter an Executive Session. Yrene Waldron seconded the motion. There was a voice vote. Motion carried.

The guests left the room.

The Executive Session ended and the guests rejoined the meeting.

Action

Extension of Review Period for CPR Applications

Mr. Love stated that, due to the restructuring of the Board and CPR applications being received at the same time, the Board will need to vote on an extension of the review period for the Christiana Care Women's and Transformation Center CPR project and Nemours PET MRI scanner applications. Per statutory timelines, the review period for applications is 90 days from date of public notice if no public hearing was requested. There were no requests for a public hearing for either application.

Action

Yrene Waldron made a motion that the Board request an extension of the review period for the applications from the Christiana Care Women's and Transformation Center and Nemours PET MRI Scanner. Dr Vincent Lobo seconded the motion. There was a voice vote. Motion carried.

Mr. Love stated that Leigh Ann Hinkle and Yrene Waldron have volunteered to serve on the Review Committee for Christiana Care. One more member is needed for Christiana Care and a Committee is needed for the Nemours PET Scanner CPR application to begin the deliberations as soon as possible.

Mr. Love proposed that the Board ask for volunteers and, if they fail to get volunteers, that the Chair be given the authority to appoint members. The Board members agreed.

Scott Perkins volunteered to serve on the Review Committee for Christiana Care. Jill Rogers and Dave Hollen volunteered to serve on the Review Committee for Nemours. Mr. Love will consider who to appoint as the third member of the Nemours Review Committee.

SUN Behavioral Health Motion for Reconsideration

John Walsh recused himself and left the room.

Mr. Love stated that a motion for reconsideration was filed on behalf of Universal Health Services (UHS) which represents Rockford LLC and Dover Behavioral Health LLC requesting a reconsideration of the decision rendered by the Board on October 22, 2015 approving the CPR application.

Jason Powell spoke on behalf of UHS, Rockford Center, and Dover Behavioral Health. He stated that they are respectfully asking the Board to reconsider the approval of SUN Behavioral Health's application.

Mr. Powell stated that his clients have been here for over 30 years providing care and treatment to Delawareans for mental illness. His clients Rockford and Dover Behavioral live with mental illness every day and work closely with other health care providers, hospitals, the State of Delaware and a court appointed monitor and have done so for years providing the appropriate care to Delawareans. His clients welcome any outside provider that can come to this state and provide appropriate care and/or use existing care that is here. By virtue of this reconsideration he recognized that the few minutes he was given to speak were not going to persuade the Board to reverse its decision.

Mr. Powell stated that they are asking the Board to reconsider the scope and size of the project. This is the time to right size this project. This project is too big. This proposal in its current scope and size is not beneficial to the state of Delaware or its citizens. A 90 bed facility is a mammoth facility. Why 90 beds? SUN is unable to answer this question.

Mr. Powell's clients put forth data. Meadowwood also put forth data that showed the Sussex County residents that required inpatient care on a monthly basis. Approximately 25 to 30 patients per month require inpatient care and treatment. Approval of a project of 90 beds will greatly over bed the state.

The consequence of approval of a project this size is even more concerning given what is known about SUN and their intentions. SUN currently operates no facilities. They build a facility, run it and then sell it to an unknown unnamed entity and leave. As a result, the state will be left with a facility that is excessive in size and unable to be occupied. In order to be profitable it needs to be kept occupied. The unfortunate result of this is to have people in bed when it is not appropriate and that is not where the State of Delaware is headed.

The Health Resources Board is aware of the Department of Justice Settlement. An investigation recognized that people were being institutionalized for prolonged periods of time and, as a result of the settlement, there were benchmarks put in place. The State of Delaware had benchmarks to reduce its inpatient care by 30 percent as of 2014 and by 50 percent by 2016. The State has been unable to do that in its current atmosphere. Delaware is moving toward more outpatient treatment; however, by adding an additional 90 bed facility that is only needed by 25 or 30 people per month, Delaware will take a step backward in that regard. What is needed in Sussex County is outpatient services. That was also a consequence of the Settlement Agreement with the Department of Justice. Delaware is moving to outpatient services.

SUN's proposal states that 94 percent of its revenue comes from inpatient services. It is heavily weighted and reliant on inpatient services. Outpatient services and supportive housing are not included in SUN's proposal.

Mr. Powell stated that his clients are asking the Health Resources Board to reconsider the scope and size of this mammoth project. It should be reduced to 30 or 45 beds with a heavier focus on outpatient treatment which is what is truly needed in Sussex County.

Lisa Goodman spoke on behalf of SUN Behavioral Health. She stated that Mr. Powell did not address the following three standards by which this body must consider a motion for reconsideration:

1. Has Mr. Powell's client submitted any newly discovered, significant, relevant information not previously available or considered by the Board? The answer is no and they are not arguing that they have submitted any new evidence. They are arguing that they do not agree with the conclusions that the Board drew from the evidence.
2. Have there been significant changes in factors or circumstances relied upon by the Board in reaching its decision? Mr. Powell did not argue that there have been any significant changes since there have not been since the decision was reached.
3. Has the Board materially failed to follow its adopted procedures in reaching its decision? Mr. Powell did not argue that, and Ms. Goodman does not think he can in good conscience. This went through a very careful process.

Ms. Goodman stated that the Board must find one of these things to be true before granting a motion for reconsideration. SUN Behavioral Health submits that none of them have been argued to be true. The Board decided how it weighed the evidence that Mr. Powell's client submitted. The Board decided to weigh the evidence in such a way that resulted in granting SUN's application. There has been no change in fact or circumstance. There has been no newly discovered evidence and the Board followed all of its rules. Those are the three standards and this application does not meet any of them. For the Board to put this application back through the entire process makes no legal or rational sense other than simply to delay the building of a much needed facility.

Steve Page, President and CEO of SUN, stated that there are two critical things to think about. One, it is not arbitrary and the Board has their application and response. They are providing services that are in line with services on a per capita basis in New Castle and Kent Counties. This is 90 beds. In terms of inpatient versus outpatient, outpatient is a critical element in the continuum of care and will absolutely be offered.

One thing that will greatly enhance the patient experience is being able to be treated in an inpatient experience in the community, go home and be able to come back to hospital based outpatient services within a reasonable distance to the hospital. Transportation will be provided to the outpatient. This is not something that is currently happening because no one is going from Sussex County to New Castle County for an inpatient stay and then continuing as an outpatient. It is not reasonable.

On the inpatient side they are getting pulled from their support system. They are getting pulled from their families. They are not able to have family therapy or have family come every night. It becomes so difficult to get care that far away that many people will not participate.

Dr. Nick Perchiniak, an emergency physician at Beebe Hospital and the Associate Medical Director, stated that he has a firsthand view of the issues they face with holding psychiatric patients, not only with the delay in care they are being provided with, but also the delay in providing care for other general patients who cannot get into a bed while those beds are occupied.

Dr. Perchiniak pulled data for the last six months in terms of involuntary admissions and the percentage in length of stay greater than 12 hours was 46 percent. The length of stay greater than 24 hours was 10 percent and 3 percent of their patients had a length of stay greater than 36 hours. The longest length of stay was in November when a patient waited nearly 100 hours for inpatient care. They were told that all beds were at capacity for over three days. In terms of voluntary admissions 32 percent had a length of stay greater than 12 hours. It is a difficult situation. A voluntary patient typically comes to the emergency room voluntarily seeking care. Often they become frustrated by the wait and leave and without receiving care or must be evaluated to determine whether they are safe for discharge. SUN Behavioral Health is a critical resource, not only for the emergency department to treat these patients appropriately, but also to allow the general medical care and outpatient care that a facility like this would be able to provide.

Jason Powell, of UHS, stated that to address the legal arguments it is his understanding from listening to counsel from SUN that this is a two step process. First the Board must determine if it meets the stated criteria and then it must allow for a reconsideration hearing. He stated that he respectfully disagrees with that. The cause has been shown and this meeting is the hearing on

the reconsideration. He stated that he needs to confirm his understanding of the purpose of today's hearing.

Second, UHS was only allowed a few minutes at the meeting today. They have submitted paperwork that includes all of their arguments. He only touched on a few arguments today; the fact that two key points that he brought up in his presentation are that they operate no facilities and they have no rational basis for a 90 bed facility. They submitted the documents. Ms. Wright investigated it after the Review Committee meeting and prepared a chart which shows in 2014 that at best 20 patients per month were going inpatient and in 2015 it was less. The reason is because the state is complying with the DOJ Settlement to have least restrictive measures and not inpatient people as much as has been done in the past. The fact that there was no response to the two arguments that were made is a concession that they understand that there is no rational basis for a 90 bed facility. The doctor's comments are well taken. It is understood and, for the purposes of today's hearing, they are conceding that need; however, all of the concerns that he brings on behalf of his patients and his hospital's patients can be addressed in an appropriately sized facility.

Mr. Love stated that the Board will consider the request for reconsideration. It will not discuss the merits of the application itself. He asked if the Board agrees or disagrees that the application that has been approved should be reconsidered. There are three criteria that the Board must address. If the Board decides that the application should be reconsidered the process will be discussed at that time.

Ms. Suder stated that under *29 Del. C. §9305* the Board needs to determine if there is good cause to reconsider the application. There should be good cause if the request:

- a. Presents newly discovered, significant, relevant information not previously available or considered by the Board; and
- b. Demonstrates that there have been significant changes in factors or circumstances relied upon by the Board in reaching its decision; or
- c. Demonstrates that the Board has materially failed to follow its adopted procedures in reaching its decision.

Mr. Love stated that, in order to reconsider, the Board needs to agree with a and b or c. Ms. Rogers stated in terms of c the Board would have to have meet its own standards and timelines, and the mechanics of how they approached the work. Ms. Suder stated that is correct.

Mr. Love stated that there are two things that need to be considered. The first is whether contacts made by one of the Review Committee members unduly influenced the Board. The second question is the recent hearing that Ms. Suder was involved in with another case and whether or not the Board fully discussed the information that was presented to them by the Review Committee.

Ms. Ward stated that she does not think conditions a and b have been met. Ms. Rogers agreed. Mr. Love stated that, in terms of condition c, the element of whether or not the Board fully discussed the recommendation from the Review Committee it could be interpreted that the Board has not followed the process if the Board feels that it did not review and consider all of the information. Ms. Ward stated that the Board relies on the report that is put together by the Review Committee and each member does their best to make a fair judgement on whether or not

to approve. She stated that her question is whether or not Mr. Walsh had any undue influence on the Review Committee.

Mr. Love stated that the first time he was aware of this issue was prior to the December Board meeting during which the Review Committee's recommendations were presented. Mr. Walsh recused himself from that meeting. The other Review Committee members were not aware of any contacts made by Mr. Walsh during their committee reviews.

Ms. Waldron stated that she agrees this facility is needed. She asked if the Review Committee discussed in depth whether this project needed to be of the size and scope that was requested.

Ms. Suder stated that Mr. Walsh reached out to the representatives and senators in Sussex County and asked them to weigh in.

Ms. Waldron asked if the letters that were received by those legislators influenced the Health Resources Board's vote. She thinks the answer is no.

Mr. Love stated that the Review Committee was charged with seeing whether or not the application meets the seven criteria. Three or four legislators spoke at the public hearing and some letters were sent. The Committee's job was to match the application with the seven criteria.

Mr. Love stated that the question is whether the Board finds that the request from UHS meets the standards for reconsideration.

Action

Yrene Waldron made a motion that the Board reconsider the case based on the potential that the Review Committee did not consider the size and scope of the project appropriately. Dr. Vincent Lobo seconded the motion. There was a vote by showing of hands, four in favor, three opposed. Ms. Suder stated that the vote must be a majority of the Board members that were present at the meeting. Five members are required to vote in favor for the motion to pass. The motion did not pass.

Dr. Lobo made a motion that the Board reconsider the application in order to have a more forward discussion than what occurred at the November meeting. Ms. Rogers seconded the motion. There was a vote by showing of hands. Four members voted in favor. The motion for reconsideration failed.

Post Acute Medical Application

John Walsh rejoined the meeting. Yrene Waldron recused herself and left the room.

Post Acute Medical submitted a CPR application on August 27, 2015 to construct an inpatient rehabilitation facility in Dover, DE with capital expenditure estimated at \$15 million. The CPR Report to the Board was distributed to the Board members for their review. The Review Committee included Gina Ward, Chair, Lynn Fahey and Dave Hollen. Ms. Ward led the discussion for the application.

Ms. Ward stated that the applicant is a member of the Post Acute Medical LLC Family of Health Care Facilities. Post Acute Medical LLC is a specialty health care company focused on delivering high quality post acute care in the most efficient and cost effective settings.

They originated with the acquisition of Warms Springs Hospital System in 2006. Its headquarters are located in Nola Pennsylvania. Today Post Acute and its affiliated entities currently manage or own 16 long term acute care hospitals and 8 inpatient rehabilitation facilities. They also operate outpatient rehabilitation centers, comprehensive wound care centers and one assisted living facility. They provide quality services across the Post Acute spectrum.

The application notes that patients admitted to inpatient rehabilitation have endured extreme trauma and Post Acute's approach is to maximize return of functional abilities while supporting individuals with companionate care. Throughout the communities that they serve, Post Acute assists patients to achieve optimal quality of life by delivering comprehensive specialized care.

Their proposal is to develop a new 34 bed freestanding acute inpatient rehabilitation facility in Dover on the Eden Hill Medical Campus. They will admit patients of all ages and admissions will include persons with stroke, brain, spinal cord injury, orthopedic conditions, neuromuscular disabilities and other medically complex conditions.

The proposed facility will offer an interdisciplinary team working collectively to optimize patient health and quality of life.

On August 27, 2015 the Health Resources Board received the Certificate of Public Review application from Post Acute. On October 22, Post Acute representatives provided the Health Resources Board with a presentation. A public hearing related to the matter was held on November 30. Two Review Committee meetings were held, one on November 16 and one on December 9. At the public hearing on November 30 speakers included families of rehabilitation patients that provided personal testimony that supported a need for the new facility in Dover. Testimony was also provided by local area hospitals, rehabilitation advocates, long term care facilities and city officials.

A significant number of letters of support were sent requesting the Board's approval of the proposal; however, there were also detailed concerns expressed regarding the impact to existing providers currently serving the population requiring rehabilitation services. It was mentioned that the approval of the proposal could result in underutilization of inpatient rehabilitation beds already in existence and could also affect Skilled Nursing Facilities serving inpatient rehabilitation patients.

Ms. Ward went through each of the seven criteria, briefly summarizing the Review Committee's findings.

Criterion I: The relationship of the proposal to the Health Resources Management Plan.

Ms. Ward stated that currently the Health Resources Management Plan does not address the need for IRF beds; however, the application states that the new IRF will enhance access and quality of health care as well as expand services to the medically indigent. It will increase accessibility to and patient choice for rehabilitation services and improve access to the medically indigent.

Post Acute seeks to partner with local hospitals to assist in the post-acute referral process ensuring a patient's needs are aligned with the right services. As Post Acute is cognizant of value to patients and payers, they will seek to partner with high value "downstream" skilled nursing, home health, and outpatient rehabilitation providers. Also a post-discharge planning process will

be in effect to ensure continuum of care. Post Acute suggests that IRF services are best provided close to the homes of patients and families.

The application states all Post Acute rehabilitation hospitals work closely with communities to meet the needs of their patients. Each hospital responds to its community's specific needs to design programs.

There was a discussion surrounding the similarities of Skilled Nursing Facilities (SNFs) and IRFs and whether these facilities are interchangeable. That was a main topic of discussion at the Subcommittee meetings.

The Review Committee agrees that while SNFs provide inpatient rehabilitation services to patients in a nursing home setting; nursing homes are intended for extended nursing care and residents may be classified as long-term-care residents. A patient receiving rehabilitation services for short-stay post acute services may be better served in an IRF. With the diversity of patients in SNFs, staff may find it difficult to specialize in intensive rehabilitation. By contrast, an IRF is equipped to care for patients requiring hours of daily therapy.

Ms. Ward stated that the Review Committee discussed the fact that this is unique and different than a SNF in the continuum of care.

Based on this review the Committee found that the application meets criterion one by a unanimous vote.

Discussion

Mr. Love stated that on the point Ms. Ward just made, he is not clear on the difference between a Skilled Nursing Facility and its ability or lack of to provide the care that would be provided in this program. He asked Ms. Ward to discuss what would be lacking in Dover if this facility did not open.

Ms. Ward stated that Dover residents do not have an Inpatient Rehabilitation Facility (IRF) in Kent County. They do have access to Bayhealth's Milford Inpatient Rehabilitation Facility or they can go to Health South or Christiana Care in New Castle County.

Ms. Ward stated that the IRF will also offer outpatient services. In the continuum of care an inpatient in a facility like this who is ready to go home can continue with the same providers as an outpatient.

Mr. Love asked if the primary difference between an IRF and SNF in terms of rehabilitation is the amount of medical services that are available. Ms. Ward stated that an IRF has a more homogeneous population all needing rehabilitation. A full service IRF will provide more specialized therapy that may also be provided in a SNF; however, it will not be provided for as many hours per day, and it may not be provided on the weekend. Patients in an IRF are also reviewed by physicians and nurses more frequently than patients in a SNF.

Mr. Walsh stated that he was getting the implication that the difference between the SNF and the IRF is that the SNF has a dual purpose of long term care and rehabilitation, whereas the IRF has one purpose only to rehabilitate people and get them able to function outside. Therefore they have a more focused purpose with better outcomes.

Ms. Ward stated that is correct.

Mr. Love stated that the Review Committee found that the application meets criterion one.

Action

Mr. Walsh made a motion to approve the Review Committee's recommendation on criterion one. Mr. Hollen seconded the motion. There was a vote by show of hands; 7 in favor. Motion carried.

Criterion II: The need of the population for the proposed project.

Ms. Ward stated that the applicant asserts there is a need for additional IRF beds in Kent County. The Review Committee determined that there is a need beyond Kent County, statewide, due to the growing population over the next five years. Kent County does not have an inpatient rehabilitation facility.

Ms. Ward stated that the Health Resources Management Plan does not have an approved formula for determining IRF bed need. Post Acute Medical submitted one with the original application that used a methodology similar to that used by Health South in their CPR application.

In reviewing the need methodology used by Post Acute, the Review Committee requested the expertise from the Health Resources Board epidemiologist to review the methodology in depth. In the absence of the HRMP-defined need methodology for IRFs, the epidemiologist concluded that "Post Acute's methodology is neither incorrect nor correct". The Health Resources Board will need to evaluate the assumptions in which need methods were used.

Ms. Ward stated that the Review Committee acknowledges that bed need methodology is subjective; however, after thorough review, the Review Committee found that it is a good faith basis for Post Acute's methodology and that other evidence weighed in favor of determining a need for the project.

The Review Committee found that the application meets criterion two.

Action

Dave Hollen made a motion to approve the Review Committee's recommendation on criterion two. Leighann Hinkle seconded the motion. There was a vote by show of hands; 6 in favor, 1 opposed, 1 abstained. Motion carried.

Criterion III: The availability of less costly and/or more effective alternatives to the proposal, including alternatives involving the use of resources located outside the State of Delaware.

Ms. Ward stated that the applicant notes that Delaware currently has IRF facilities such as Bayhealth Milford-Sussex County, HealthSouth Rehabilitation-New Castle County and Christiana Care Wilmington Hospital-New Castle County. The staff has confirmed that IRF beds are not available in Dover.

The application references inpatient rehabilitation facilities, such as Shore Health System in Easton, MD and HealthSouth Chesapeake in Salisbury MD, which is a 50 minute commute from Dover.

Testimony provided at the public hearing from existing providers indicated there are alternative services to meet the need of the current population requiring inpatient rehabilitation services such as the existing inpatient rehabilitation facilities to include Bayhealth in Milford which is approximately 20 miles south of Dover and HealthSouth approximately 25 miles from Dover which opened in December 2014.

Other alternatives to provide rehabilitation services include SNFs. Although SNFs provide inpatient rehabilitation services, the Review Committee agrees that SNFs provide different levels of rehabilitation care as opposed to IRFs providing intense specialty care to patients. The IRF is a hospital. It must have physician staffing and a physician must review patients daily. Proformas submitted as a part of Post Acute's CPR application show total nursing (including RNs and LPNs) staff in the proposed Post Acute IRF will exceed four-hours per patient day. The Delaware state average for SNF nursing hours per patient day in 2013 was below two.

As of 2013, Kent County had six private nursing homes with a total of 672 privately licensed beds. The Board reviewed a chart included in the CPR Report to the Board.

The Review Committee discussed the fact that the weighted occupancy rate in 2013 at all Kent County facilities was above 82 percent, and three of the six facilities were above 90 percent.

The Review Committee acknowledges the approval of the Eden Hill Center by the Board in 2013; however, the Committee feels that with population projections increasing over the next 5 years, the need for additional rehabilitation services in Kent County will increase. The approval of the new IRF will contribute to the Delaware State Health Care Innovation Plan Model (SIM). The Triple Aim goals of improving the health of Delawareans, improving the patient experience of care, and reducing health care costs will be aided by the IRF's ability to provide continuity of care for patients post discharge.

The Review Committee found that the application meets criterion three.

Action

Dave Hollen made a motion to approve the Review Committee's recommendation on criterion three. John Walsh seconded the motion. There was a vote by show of hands; 7 in favor, 1 opposed and 1 abstained. Motion carried.

Criterion IV: The relationship of the proposal to the existing health care delivery system.

Ms. Ward stated that Post Acute does not currently operate any facilities in the service area. Post Acute does not have a formal existing relationship to the delivery system in Delaware as of yet. They have discussed the project with healthcare professionals and provider organizations in Delaware. The discussions included officials with Bayhealth, Christiana Care, Eden Hill Medical Center in Dover, area physicians and local advocacy groups. Eden Hill is in support of the proposal. The applicant will seek to establish relationships with providers across the region. The assumption is for the new facility to receive patients from Bayhealth and area physicians. Patients will be referred to other care settings as appropriate. Post Acute will accept all payer coverages and will provide charity care. The application addresses the anticipated impact on existing providers in the healthcare system to include physicians, hospitals, skilled nursing and home health services.

The Certificate of Public Review Report to the Health Resources Board describes the relationships with each of those constituents.

Ms. Rogers asked what the relationship is between the applicant and Eden Hill. She asked if it is a financial relationship. Ms. Wright stated that they are going to be renting the facility on the Eden Hill Campus. They will have a rental relationship.

The Review Committee found that the application meets criterion four.

Action

Mr. Hollen made a motion to approve the Review Committee's recommendation on criterion four. Mr. Walsh seconded the motion. There was a vote by show of hands; 6 in favor, 1 opposed and 1 abstained. Motion carried.

Criterion V: The immediate and long-term viability of the proposal in terms of the applicant's access to financial, management and other necessary resources.

Ms. Ward stated that MedCore Partners will develop and construct the facility with Post Acute to ensure the facility meets their standards. MedCore, a healthcare real estate development firm will provide the capital for the building and retain ownership of the building after its completion. Post Acute will enter into a long-term lease with MedCore to operate the facility. Exhibit 6 of the application provides a letter attesting that MedCore has the available funds to construct the facility. The proposal will have positive operating margins for all of year 2019, year two of the project.

The proposed facility will use 101.0 FTEs once it meets the occupancy target. The personnel will include jobs in the following functions: Nursing; Physical Therapy; Occupational Therapy; Dietary; Housekeeping; Laundry; Pharmacy; Administration; Physician; Admissions; Business Office; Case Management; Human Resources; Maintenance; Marketing; Medical Records; Radiology; Central Supply; and Other.

The facility will welcome area schools for training purposes. Post Acute hopes to forge partnerships with in-state schools providing new graduates exposure to opportunities at Post Acute at the Dover facility.

Ms. Ward stated that another thing that gave the Review Committee confidence that this will be well managed is that Post Acute already manages 16 LTACHs (Long Term Acute Care Hospitals) and eight inpatient rehabilitation facilities throughout the country.

The Review Committee found that the application meets criterion five.

Action

Mr. Hollen made a motion to approve the Review Committee's recommendation on criterion five. Mr. Walsh seconded the motion. There was a vote by show of hands; 7 in favor, 1 opposed and 1 abstained. Motion carried.

Criterion VI: The anticipated effect of the proposal on the costs of and charges for health care.

Ms. Ward stated that the Certificate of Public Review Report to the Health Resources Board includes a statement of revenue and expenses which shows that the facility will be making a profit by 2019.

The proposed Post Acute IRF supports value-based purchasing, accountable care, bundled payments and other payer arrangements that measure quality and cost. Post Acute notes through Centers for Medicare and Medicaid Innovation, CMS is now testing value based programs to include Hospital Value Based Payments for Care Initiative and the Comprehensive Care for Joint Replacement program. The core premise is that payments should be based on value which is measured in terms of quality of care.

The Review Committee found that the application meets criterion six.

Action

Mr. Hollen made a motion to approve the Review Committee's recommendation on criterion six. Leighann Hinkle seconded the motion. There was a vote by show of hands; 7 in favor, 1 opposed and 1 abstained. Motion carried.

Criterion VII: The anticipated effect of the proposal on the quality of health care.

Ms. Ward stated that six rehabilitation hospitals operated by Post Acute have Joint Commission accreditation. Two recent facilities that opened are expected to receive accreditation soon. The applicant will pursue two Joint Commissions standards immediately; Stroke and Traumatic Brain Injury.

It will also implement an Electronic Medical Record (EMR) system, most likely MEDHOST, which Post Acute selected as a company standard. The system is interoperable with other common hospital EMRs. Area hospitals referring patients to and receiving patients from the proposed facility will have electronic transfer capabilities. The Applicant's IRF will participate with other acute care hospitals in Delaware in the Delaware Health Information Network (DHIN).

Mr. Walsh stated that he has a relative who has been in a Milford rehabilitation facility and also has been in a skilled nursing facility. While both were good at what they did, the outcomes in the inpatient rehabilitation facility were significantly faster, better and had a more long term beneficial effect.

The Review Committee found that the application meets criterion seven.

Action

Mr. Hollen made a motion to approve the Review Committee's recommendation on criterion seven. Mr. Walsh seconded the motion. There was a vote by show of hands; 7 in favor and 1 abstained. Motion carried.

Ms. Ward stated that, based upon the foregoing findings, the Review Committee hereby recommends approval of the CPR application submitted by Post Acute Medical LLC with the following conditions:

- Post Acute will develop a charity care policy setting forth criteria for identifying patients who will receive care without charge or at a reduced charge and for whom collection efforts will not be made. The applicant shall maintain records to measure the amount of charges forgone under this charity care policy. Charity care shall not include bad debts or charge reductions resulting from contracts with third party payors. Within 180 days after the end of each fiscal year, a certified public accountant shall submit a report to the Delaware Health Resources Board showing the applicant's total gross charges and the amount of charges forgone under the charity care policy. If the amount of charges forgone is less than 2.0 percent of total gross charges, the applicant shall be responsible for making up such deficit in the following year and shall submit to the Board its plan for increasing the level of charity care provided. Likewise, if the amount of charges forgone is more than 2.0 percent of total gross charges, such excess shall be credited towards the following year's obligation.
- Post Acute will agree to participate in the Delaware Health Information Network (DHIN) as the state designated health information exchange as a fully participating data sender at the prevailing fee structure, and to participate in additional functionality and data exchange features and services as made available by DHIN. The level of participation will be limited to what is permitted under State and Federal laws.

Action

Mr. Hollen made a motion to approve the application with the two conditions recommended by the Review Committee. Mr. Walsh seconded the motion. There was a vote by show of hands; 6 in favor, 1 opposed and 1 abstained. Motion carried.

Bayhealth Milford Memorial Presentation

Bayhealth submitted a CPR application in October to construct a replacement hospital in Milford with an estimated capital expenditure of \$268 million.

Representatives of Bayhealth gave a presentation on the Milford Hospital Replacement Facility. A copy of the presentation is posted on the Health Resources Board website at <http://dhss.delaware.gov/dhss/dhcc/hrb/meetingpresentation.html>.

Mr. Love stated that a review committee will need to be selected to start the review process.

Other Business

There was an opportunity for other business and there was none.

Public Comment

There was an opportunity for public comment and there was none.

Next Meeting

The next Health Resources Board meeting will be held in the Farmington/Felton Conference Rooms on the first floor of the Department of Transportation Administration Building, 800 Bay Road, Dover on Thursday, January 28, 2016 at 2:30 p.m.

Adjourn

The meeting adjourned at 6:10 p.m.

Guests Attending

Mike Ashton
Heidi Bowie
Jennifer Brady
Andrew Burdan
Michelle Clark
John Constant
Elizabeth Fenton
Jeffrey Fried
Paul Lakeman
Maddy Lauria
Sean Mace
Harris S. Marx
John McKenna
Edwardo Medeiros
Michael Metzions
Terry Murphy
Anthony Misitano
Steve Page
Jerry Peters
Jason Powell
Danielle Pro
Alice Rausch
John J. Rhodes
Jen Rini
John Van Gorp
Kim Whitelock

Beebe Medical Center
Post Acute Medical
Potter Anderson
Brain Injury Association Delaware
Bayhealth Medical Center
Dover Behavioral Health Services
Saul Ewing
Beebe Healthcare
Bayhealth
Cape Gazette
Eden Hill Medical Center
Mental Health Advocate
UHS Rockford
SUN
Beebe Medical Center
Bayhealth
Post Acute Medical
SUN
Bayhealth
UHS/Rockford/DBHS
Bayhealth
Bayhealth
Christiana Care Health System
News Journal
Bayhealth
SUN